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HIGH COURT OF CHHATTISGARH, BILASPUR

Division Bench: Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Sunil Kumar Sinha,JJ.

M.A.(C) No. 743 of 2007

Daulatram Vidhani & Another

Versus

Dhanpat Rai & Others

ORDER

Order for consideration

Sd/-
Judge
1.09.2007

Hon'ble Shri L.C. Bhadoo, J.

Sd/-
L.C. Bhadoo
Judge

Post for Order: 3.09.2007

Sd/-
Sunil Kumar Sinha
Judge

(26)

HIGH COURT OF CHHATTISGARH, BILASPUR

DIVISION BENCH: HON'BLE SHRI L.C. BHADOO & HON'BLE SHRI SUNIL KUMAR SINHA, JJ.

M.A.(C) No. 743 of 2007

APPELLANTS CLAIMANTS

1. Daulatram Vidhani, aged about 45 years Son of Late Not Known Vidhani.
2. Smt. Sushila Devi, aged about 40 years Wife of Daulatram Vidhani

Both resident of Torwa Pump House, Bilaspur Tahsil and District Bilaspur (C.G.)

Versus

RESPONDENTS NON-CLAIMANTS

1. Dhanpat Rai Son of Pyarelal Ranmile, aged about 45 years, Resident of Populat Society Naka No.10 Wadi (Near Naka), Plot No.27, Amravati Road, Nagpur (Maharashtra).

(DRIVER)

2 Shri Jaipal Singh Son of Surender Singh, Resident of Gurunanak Nagar, Near Gurudwara, Raipur, Through: Bombay – Odiya G.E. Road Lines, Chhokra Nala, Raipur (C.G.)

(OWNER)

3 The Branch Manager, The Oriental Insurance Company Limited, Branch Officer 2 Madina Building, Jail Road Raipur (C.G.), through: Branch Office, Rajiv Plaza, Bus Stand Bilaspur (C.G.)

(INSURER)

(APPEAL UNDER SECTION 173 OF THE MOTOR VEHICLES ACT, 1988)

Appearance:

Shri P.K. Tulsiyan, counsel for the appellants.

Shri Sudhir Agrawal, counsel for respondent No.3.

ORDER
(03.09.2007)

Following Order of the Court was delivered by **Sunil Kumar Sinha, J.**

(1) This appeal is directed against the award dated 03.04.2007 passed by the Second Additional Motor Accident Claims Tribunal, Bilaspur in M.A.C.C. No. 1/2006, whereby, the Tribunal has awarded a sum of Rs.3,91,000/- to the appellants, along with the interest @ 6% per annum from the date of filing of the Claim Petition till its realization, on account of death of their son namely- Jitendra @ Jitu.

(2) The claimants/appellants have filed this appeal for enhancement of the award, whereas, respondent No.3, the Insurance Company, has filed a cross-objection challenging the award on many grounds.

(3) The brief facts are that on 02.07.2006, the deceased namely- Jitendra @ Jitu was traveling along with many friends in Quallis No. CG-04/A-7511. They were going from Raipur to Nagpur. On the way, this vehicle met with an accident, when it was dashed by Truck No. CG-04 ZC 5431 driven by respondent No.1, owned by respondent No.2 and insured by respondent No.3. Four persons, namely- Jitendra @ Jitu, Rajesh Nimani, Ghanshyam & Mittal Patel died in the said accident. Other persons also received serious injuries, who were admitted in Nagpur Hospital. A criminal case was also registered against respondent No.1 vide Crime No. 126/2006 of P.S. Mauda, Nagpur (Maharashtra) under Sections 279, 337, 338 & 304-1 I.P.C. and the charge-sheet was filed in Nagpur Court.

(4) The claimants/appellants, who are father and mother of the deceased, filed the Claim Petition on the ground that the deceased was earning Rs.8,000/- per month as he was working and looking after the Stone Crasher of appellant No.1 and

saving a salary of Rs.8,000/-, which would have been paid to the other persons. Apart from this, he was also earning Rs.5,000/- through the commission by selling and supplying bricks of two different industries, thereby his total earning was Rs.13,000/- per month. The deceased was a graduate and the appellants have been deprived from the said contribution made by the deceased to their family. They have claimed the amount of compensation under the following heads:

i)	on account of loss of earning	Rs. 31,20,000/-
ii)	on account of bringing of dead body	Rs. 10,000/-
iii)	on account of last rituals and other functions of the deceased	Rs. 50,000/-
iv)	on account of love and affection	Rs. 50,000/-
v)	on account of mental agony	Rs. 1,00,000/-
	Total	**Rs. 33,80,000/-**

(5) Respondents No. 1 & 2 remained exparte. Respondent No.3, Insurance Company filed its written statement after taking permission under Section 170 of the Motor Vehicles Act and has denied the total claim of the appellants on merits. Apart from resistance of the claims on merits, it had also raised objection that the owner, driver and Insurance Company of Quallis were necessary parties.

(6) The Tribunal, after framing various issues and after taking evidence, recorded a finding that the accident had occurred due to rash and negligent driving of the Truck, therefore, the owner and the Insurance Company of the Quallis were not necessary parties and the insurer of the Truck i.e. respondent No.3 is liable to pay compensation on account of death of the son of the appellants.

(7) So far as quantum is concerned, the Tribunal assessed the monthly income of the deceased as Rs.3,000/- and thereby Rs.36,000/- per year and after deduction of 1/3rd in Rs.24,000/- applied the multiplier of 16 and worked out the loss of earning in sum of Rs.3,84,000/-. It awarded Rs.2,000/- as the funeral expenses and Rs.5,000/- on account of love and affection and in this manner a total sum of Rs.3,91,000/- along with interest @ 6% per annum from the date of application till its realization has been awarded.

(8) Learned counsel for the appellants argued that the income has been assessed at the lower side. He also argued that no amount has been awarded on account of bringing of the dead body from Nagpur to Bilaspur. He further argued that the amount awarded towards love and affection is also on the lower side.

(9) On the other hand, learned counsel for the Insurance Company, who has filed cross-objection, argued that the higher multiplier has been used and the income has also been assessed on the higher side.

(10) We have heard the learned counsel for the parties at length on the appeal as well as cross-objection and have also perused the records of the Tribunal.

(11) So far as assessment of monthly income of the deceased is concerned, it has been deposed by appellant No.1 that on account of working of the deceased in his Crasher, he was saving Rs.8,000/- per month and in this manner, the deceased was contributing Rs.8,000/- per month for them. He also deposed that the deceased was engaged in bricks supply business by which he was earning Rs.5,000/- per month as additional income.

(12) Admittedly, the Crasher was on the name of father of the deceased and he was paying income tax etc. on account of earning from the said business but he could not file any documentary evidence to show that in fact, either Rs.8,000/- per month was being paid to the deceased or in any manner, the deceased was saving the amount to the said extent by participating in the business of his father. So far as earning from commission by selling bricks is concerned, one Kishore Vidhani has been examined as AW-4, who was the Brick Industry owner. He has stated that the persons, who used to purchase *Gitty* (broken pieces of crushed stone) from the industry of father of the deceased, they also used to purchase bricks etc., which was supplied by him through the deceased and by this a commission of Rs.2,500/- to Rs.3,000/- was being paid by them to the deceased. In the cross-examination, he has admitted that he used to maintain the register, which was in relation to mining work but he has no documents or calculation pertaining to payment of the said commission. The mother of the deceased namely- Sushila Devi has also been examined as AW-2 but she has not deposed a single word pertaining to the income of the deceased.

(13) It is on this evidence, the Tribunal, after appreciation, did not believe that in fact, the deceased was contributing in the Crasher business in such a manner that he was saving/earning Rs.8,000/- per month. The factum of earning by commission was also not believed by the Tribunal. The Tribunal, on its own, after assessing the over-all circumstances and after perusing the business paper of the appellants and the fact that the deceased was contributing in the business of his father, in absence of any evidence of the particular quantum of contribution, looking to the age of the deceased, assessed a sum of Rs.3,000/- per month as the income of the deceased. The above assessment made by the Tribunal does not appear to be unreasonable or unjust on the one hand and on other hand, it can also not be

said to be on the higher side. Therefore, the arguments advanced by the learned counsel for the appellants as also the Insurance Company regarding assessment of monthly income of the deceased to be unjust or improper cannot be accepted.

(14) So far as multiplier is concerned, admittedly the deceased was unmarried, graduate and was determined to be aged about 23 years. The Tribunal has also determined the age of the appellants to be 50 years and 40 years on the date of filing of the affidavit and has used the multiplier of 16. The affidavit was filed on 13.2.2007, whereas the accident took place on 2.7.2006. In the Claim Petition, which was filed on 15.9.2006, the ages of the appellants have been mentioned as 45 years and 40 years. Therefore, the average age of the appellant No.1 can safely be held in between 48 to 50 years and appellant No.2 in between 39 to 40 years on the date of incident and in these circumstances looking to the over-all situation and the Motor Vehicles Act being a benevolent legislation, the Tribunal has rightly applied the multiplier of 16. It is also justified on the logic that had this being a claim on behalf of appellant No.2 only, who was admittedly held to be aged about 40 years by the Tribunal, the multiplier good for her case was 16. Therefore, using such multiplier by the Tribunal cannot be said to be wrong or a higher multiplier in the prevailing facts and circumstances of this case. The arguments advanced by the learned counsel for the Insurance Company that the multiplier was higher, cannot be accepted.

(15) So far as expenses on account of bringing of the dead body from Nagpur to Bilaspur is concerned, admittedly the Tribunal has not awarded any amount for the same. The dead body was brought from Nagpur to Bilaspur and on this count, Rs.10,000/- has been claimed by the appellants. Looking to the long distance in between these two places, we deem it proper to allow Rs.10,000/-. As far as quantum on account of love and affection is concerned, the Tribunal has awarded as Rs.5,000/-, which

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appears to be on the lower side. We are of the considered view that this quantum must be increased looking to the fact that a young boy, aged about 23 years has expired and the mother and father are the claimants. We deem it proper to allow Rs.10,000/- each to appellants No. 1 & 2 on this count instead of Rs.5,000/-.

(16) In the result, the appeal is partly allowed. The claimants/appellants shall be entitled to receive Rs.3,84,000/- towards loss of earning, Rs.2,000/- towards funeral expenses, Rs.10,000/- towards cost incurred in bringing the dead body to Bilaspur and Rs.20,000/- on account of love and affection. In this manner, the total amount of compensation awarded by the Claims Tribunal is enhanced by Rs. 25,000/- and to this extent the award stands modified and the appeal stands allowed. The cross-objection has no force, the same deserves to be dismissed and is accordingly dismissed.

(17) No costs.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Sunil Kumar Sinha
Judge

vatti